

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ANGELO S. RANDOLPH,	)	
	)	Civil Action No. 18 – 1686
Plaintiff,	)	
	)	
v.	)	Chief District Judge Mark R. Hornak
	)	Magistrate Judge Lisa Pupo Lenihan
CHAD LOVELAND, <i>et al.</i> ,	)	
	)	
	)	
Defendants.	)	
	)	

**MEMORANDUM ORDER**

Pending before the Court is a Motion to Dismiss Plaintiff's Amended Complaint in the Form of a Motion for Summary Judgment that was filed by Defendant Chad Loveland on May 21, 2019. (ECF No. 26.) Defendant Loveland seeks dismissal of Plaintiff's claims under the Fourteenth Amendment, as well as dismissal of his excessive force claim for which he relies on several matters outside of the pleadings. He also seeks dismissal of Plaintiff's claim for the alleged use of racial slurs and requests that the Court strike Plaintiff's demands for injunctive and declaratory relief. He additionally claims that he is entitled to qualified immunity. No discovery has taken place to date, nor has the Court established a schedule for summary judgment motions. Given the posture of the case, a motion for summary judgment on excessive force is premature. Accordingly, this 10th day of June, 2019,

**IT IS HEREBY ORDERED** that the Motion to Dismiss in the Form of a Motion for Summary Judgment is denied without prejudice as premature as it relates to Plaintiff's claim of excessive force. Defendant Loveland may raise these arguments again in a properly filed

Motion for Summary Judgment after Plaintiff has been afforded time to conduct limited discovery on this issue.

**IT IS HEREBY ORDERED** that the Motion to Dismiss in the Form of a Motion for Summary Judgment will be treated by the Court as a Motion to Dismiss as it relates to the following arguments raised by Defendant Loveland:

1. Failure to state a claim for a violation of his Fourteenth Amendment rights because he is a post conviction inmate;
2. No constitutional cause of action exists for the use of racial slurs by a state actor;
3. Plaintiff's demands for injunctive and declaratory relief should be stricken;
4. Loveland is entitled to qualified immunity.

**IT IS FURTHER ORDERED** that Plaintiff shall have thirty (30) days from the date of this Order (July 10, 2019) to submit his response in opposition to these four issues of Defendant Loveland's Motion to Dismiss.

**AND IT IS FURTHER ORDERED** that, in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(A), and the Local Rules of Court, the parties are allowed fourteen (14) days from the date of issuance of this Order to file an appeal to the District Judge, which includes the basis for objection to this Order. Any party opposing the appeal shall have fourteen (14) days from the date of service of the notice of appeal to respond thereto. Failure to file a timely notice of appeal will constitute a waiver of any appellate rights.

/s/ Lisa Pupo Lenihan  
Lisa Pupo Lenihan  
United States Magistrate Judge

**Cc:** Angelo S. Randolph  
GE3735  
301 Institution Drive  
Bellefonte, PA 16823

Counsel of Record  
*(Via CM/ECF electronic mail)*